

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.314 OF 1989

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

-
1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

HARISH AMIN AND ASSOCIATES (PVT.) LTD.
VERSUS
THE REGIONAL MANAGER & ANR.

Appearance:

MR AVINASH K MANKAD FOR PETITIONER
MR AMAR PARIKH FOR
M/S. TRIVEDI & GUPTA ADVOCATES FOR RESPONDENTS

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision: 23/06/2000

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties, perused the special civil application, draft amendment and affidavit-in-reply filed by respondents No.1 and 2. The petitioner has not filed any rejoinder to the reply.

#. Challenge has been made by petitioner to the order dated 10th March 1988 of the Regional Manager, GIDC, Vapi, under the subject: termination of agreement for sale and deduction of amount of eviction of shed Al-308 at Sarigam. Under this order, the order dated 25.11.97, annexure-D, under which Rs.68,315/- were ordered to be refunded to the petitioner on receipt of advance stamp receipt was cancelled.

#. The petitioner was allotted shed No.Al-308 in Sarigam industrial estate of the Corporation. An agreement was executed on 15.4.85. This shed was to be used by petitioner for manufacturing within a period of six months from the date of agreement but it could not be utilized and under the letter dated 26.3.87, as per their case, decided to voluntarily surrender the shed to the Corporation and possession has also been handed over on 26th March 1987 as per its case. This order has been reviewed under the impugned order.

#. The learned counsel for the petitioner raised contention that the order dated 10th March 1998 has been passed without there being any application of mind. It has further been contended that no notice has been given before passing of the impugned order. It has next been contended that it is a case of voluntary surrender of this shed and as such, the petitioner is entitled for refund of the amount and rightly, it is ordered to be refunded to it. Lastly, it is contended that the Corporation has no power of review of its earlier order.

#. I do not find any substance in any of the contentions of the learned counsel for the petitioner.

#. In reply to the special civil application, it is stated that as per the terms of agreement, the petitioner had to use the shed for the purpose for which it was allotted within six months from 16h April 1985. After allotment, the petitioner was required to make payment of Rs.3,37,815/= during the period from July 1985 to June 1987. Against this, the petitioner made payment of Rs.1,88,988/= being the 25% of the total price of sale. So till the month of June 1997, the petitioner has not made payment of the amount of Rs.1,48,827/=. So as the petitioner could not use the shed for the purpose for which it was allotted nor he could make payment of the

full amount due to the Corporation, the Corporation, vide its letter dated 10.3.88, terminated the agreement and deducted the amount of penalty. The amount recovered by the respondent-Corporation for the entire period is to the tune of Rs.2,44,204/= comprising of block-up interest, penal interest, revenue charges etc. The respondents have come up with the case that it is not a case of surrender but a case of eviction of petitioner from the estate under the provisions of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972. The notice under section 4(1) of the Act aforesaid was given to the petitioner on 4.2.87 calling upon it to show cause as to why the order of eviction should not be made and it was called upon to remain present on 16.2.87. The petitioner did not remain present. The petitioner was asked to vacate premises on or before 22.3.87 vide order dated 20.2.87, i.e. the order under section 5(1) of the Act aforesaid. This was not complied with. This order u/s.5(2) of the Act as aforesaid was made on 24.3.87. These facts stated by the respondent were not controverted by petitioner. From these facts which are uncontroverted, it is a case of eviction under the provisions of the Act, 1972. Merely because the petitioner has expressed its desire to voluntarily surrender the estate after passing of this order, it is hardly of any substance. In the letter of petitioner dated 11.2.87, it is nowhere mentioned that it voluntarily wanted to surrender the estate. In these facts, I find sufficient justification in the action of the respondents for the action taken. The petitioner, in fact, in the special civil application has not given out all these facts of proceedings taken against it under the Act, 1972. It is not the case of review but a case where the error which has been committed has been rectified. After the order of eviction has been made how it can be said to be a case of voluntary surrender and as this mistake has been committed, the Corporation has all the right to correct the same for which I fail to see what for a notice or opportunity of hearing has to be given. This petition is wholly misconceived. It is a case where the petitioner, by keeping this plot with it without any use, has deprived of another tenant and bonafide industrial entrepreneur to start his industry. The order of the respondent-Corporation impugned in the special civil application is perfectly legal and justified to which no exception can be made. It is not the law that the order even if there is some illegality in passing thereof, has to be interfered with by this court where it is satisfied that no prejudiced will be caused to the petitioner. Here in this case, the petitioner has not utilized this plot nor it has paid all the dues and in

case ultimately the action has been taken for its eviction and the amount which is deducted from the deposited made does not result in causing any injustice to the petitioner.

#. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief earlier granted stands vacated. In the facts of thsi case, no order as to costs.

.....

(sunil)